

REMARKS

Claims 1, 3-48, and 50 are amended. Claim 49 is canceled. Claim 51 is new. In view of the following remarks, Applicant respectfully requests that the Application be forwarded on to issuance.

Preliminary Comment

Applicant respectfully notes the Office uses the term "well known" in numerous locations throughout the Non-Final Office Action (hereinafter the "NFOA"), including on Pages 23, 28, 33, and 35-41 (at least 9 pages) of the NFOA. Furthermore, Applicant also respectfully notes that the term "well known" is used on these pages in such a manner that it is unclear to Applicant whether or not the office is taking Official Notice of asserted facts.

For example, on Pages 20-23 of the NFOA, the Office rejects claim 30 under 35 U.S.C. §103(a) over U.S. Patent No. 6,292,668 to Alanara et al. (hereinafter "Alanara") in view of U.S. Patent No. 7,082,312 to Zhang et al. (hereinafter "Zhang"). In this regard, the Office states: "forwarding the short text messages...to the destination was well known in the art, as taught by Zhang." This language, however, does not appear to convey that the Office is taking Official Notice of any asserted facts in making out the rejection. Instead, this language appears to be used in the context of relying on Zhang as a §103(a) reference. Accordingly, Applicant respectfully requests that the Office clearly specify which pages of the NFOA include language that is intended to indicate that Official Notice is being taken so that Applicant has a fair opportunity to respond.

Claim Objections

Claims 11-16 are objected to for allegedly being associated with various minor informalities.

Claims 11-16 have been amended and are not associated with any minor informalities. Accordingly, Applicant respectfully requests that this objection be withdrawn.

§112 Rejections

Claims 3, 30, and 36 are rejected under 35 USC § 112, Second Paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In this regard, the Office identifies that term "it" as recited in claims 30 and 36. In addition, the Office generally indicates that claim 3 is "not clear and concise" but does not provide any further details.

Claims 3, 30, and 36 have been amended and are not believed to be indefinite. Accordingly, Applicant respectfully requests that these rejections be withdrawn.

§101 Rejections

Claims 10-29 are rejected under 35 USC § 101 as allegedly being directed to non-statutory subject matter. In this regard, the Office graciously offers a suggestion with respect to amending the preamble of these claims.

Claims 10-29 have been amended in a manner consistent with the Office's suggestion and are directed to statutory subject matter. Accordingly, Applicant respectfully requests that these rejections be withdrawn.

Rejections under § 102 and § 103

Claims 10-14, 16, 17, 22, 24-26, 28, and 29 are rejected under 35 U.S.C. §102 as allegedly being anticipated by Alanara.

Claims 1, 3-9, 30-33, 35-39, 41-46, 49, and 50 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Alanara in view of Zhang.

Claims 15 and 27 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Alanara in view of U.S. Patent No. 5,610,973 to Comer et al. (hereinafter "Comer").

Claims 18-21 and 23 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Alanara in view of U.S. Patent Publication No. 2003/0054810 to Chen et al. (hereinafter "Chen").

Claims 34, 40, and 47 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Alanara in view of Zhang and Chen.

Claim 48 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Alanara in view of Zhang and what is alleged to be admitted prior art.

Response to the Rejections

In making out the rejection of claim 1, the Office argues that Alanara teaches "an active messaging client" as claimed. The Office acknowledges, however, that Alanara doesn't teach an "active message gateway" and instead relies on Zhang for teaching this subject matter. (See Page 17, NFOA). The Office argues one would have been motivated to modify Alanara with the teachings of Zhang "in order to provide a system and method of providing [an] information service by making use of short messages, as taught by Zhang". (Page 18, NFOA).

Applicant respectfully traverses this rejection and submits that a *prima facie* case of obviousness has not been established. For example, the Office relies on Column 14 (Lines 26-38) and FIGS. 1,3, and 8 of Alanara for teaching "an active message gateway configured...to receive short text messages from the digital cellular telephone and selectively forward the short text messages

according to...". This, however, contradicts the Office's own admission that Alanara doesn't teach an "active message gateway". As such, it is not surprising that this excerpt is completely silent with respect to an active message gateway and instead merely describes functionality associated with a menu application stored on a terminal (i.e., mobile phone). (See e.g., Columns 7-14, Alanara).

Furthermore, Applicant notes that in making out the rejection, the Office relies on an inherency argument with respect to several claim features. However, in doing so, the Office's burden of providing "a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art" has not been met. (*Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original), See also MPEP 2112(IV)).

As a specific example, in rejecting the claim feature "...the active messaging client includes an active message file manager...at least one of add, remove or rename an active message application...", the Office cites excerpts from Columns 10, 11, and 12 of Alanara (which do not disclose this claim feature) and states: "where the application (17, 18) includes scripts of command sequences according to the menu operation in which the active message file manager **would be implicit** for storing in the memory (14) as evidenced by the fact that one of ordinary skill in the art would clearly recognize." (See Page 15, NFOA) (Emphasis added). This statement, however, is merely a general allegation of what is allegedly inherently taught by Alanara. Missing is any basis in fact or technical reasoning to support the determination that that the allegedly inherent subject matter necessarily flows from the teachings of Alanara. Furthermore, this statement fails to even address the actual language of this claim feature. As such, the Office's burden of explaining the pertinence of Alanara to the rejection of this claim feature has not been met. (See 37 C.F.R. 1.104(c)).

As another example, in rejecting the claim feature "...the active message script comprises...to facilitate an on-going negotiation between two or more users", the Office cites excerpts from Columns 6, 10, 11, 12, 14, and 16 of Alanara (which do not disclose this claim feature) and states: "where the menu application and/or services can be updated in which a rerun **would be implicit** to install/add/incorporate the updated features into the menu application and/or services". (See Page 16, NFOA) (Emphasis added). This statement, however, is also merely a general allegation of what is allegedly inherently taught and is missing any basis in fact or technical reasoning, as required. Furthermore, this statement fails to even address the actual language of this claim feature. As such, the Office's burden of explaining the pertinence of Alanara to the rejection of this claim feature has also not been met here. (See 37 C.F.R. 1.104 (c)).

As yet another example of why a *prima facie* case of obviousness has not been established, consider that the Office argues that one would have been motivated to modify Alanara with the teachings of Zhang "in order to provide a system and method of providing [an] information service by making use of short messages". However, Alanara already teaches communicating with short messages. (See e.g., Abstract, Summary of the Invention, Column 4 (Lines 19-26), Alanara). As such, one would not have been motivated to modify Alanara in such a manner merely to achieve a result already taught by Alanara. Therefore, an articulated reasoning with some rational underpinning has not been provided to support this proposed combination, as required. (see e.g., *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (April 30, 2007), also see MPEP 2142).

For at least the reasons given above, a *prima facie* case of obviousness has not been established. Accordingly, Applicant respectfully requests that the Office withdraw this rejection and allow this claim.

Claims 3-9 depend from claim 1 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited

features which, in combination with those recited in claim 1, are neither taught nor suggested by Alanara, Zhang, or any other reference of record, either singly or in combination.

In making out the rejection of claim 10, the Office argues that Alanara discloses all the subject matter of this claim.

Applicant respectfully disagrees and submits that as Applicant explained in its last response (dated December 16, 2008), Alanara fails to disclose all the subject matter of this claim. In addition, Applicant notes that in making out the rejection, the Office relies on an inherency argument with respect to several claim features (e.g., “would be implicit”). However, in doing so, the Office's burden of providing a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art has not been met. As a specific example, in rejecting the claim feature “active messaging loader...include an active message script”, the Office cites excerpts from Columns 6 and 14 of Alanara (which do not disclose this claim feature) and states: “where the active message loader **would be implicit** as evidenced by the fact that one of ordinary skill would clearly recognize”. (See Page 7, NFOA) (Emphasis added). This statement, however, is merely a general allegation of what is allegedly inherently taught by Alanara. Missing is any basis in fact or technical reasoning to support the determination that that the allegedly inherent subject matter necessarily flows from the teachings of Alanara. Furthermore, this statement fails to even address the actual language of this claim feature. As such, the Office's burden of explaining the pertinence of Alanara to the rejection of this claim feature has also not been met.

As another example, in rejecting the claim feature “...the active message script comprises at least one command to facilitate an on-going negotiation

between two or more users...”, the Office cites excerpts from Columns 6, 10, 11, 12, 14, and 16 of Alanara (which do not disclose this claim feature) and states: “where the menu application and/or services can be updated in which a rerun **would be implicit** to install/add/incorporate the updated features into the menu application and/or services”. (See Pages 7-8, NFOA) (Emphasis added). This statement, however, is also merely a general allegation of what is allegedly inherently taught. Furthermore, this statement also fails to address the actual language of this claim feature.

As yet another example, in rejecting the claim feature “an active message file manager that at least one of adds, removes or renames an active message application”, the Office cites excerpts from Columns 10, 11, 12, and 14 of Alanara and states: “where the application (17, 18) includes scripts of command sequences according to the menu operation in which the active message file manager **would be implicit** for storing in the memory (14) as evidenced by the fact that one of ordinary skill in the art would clearly recognize.” (See Page 8, NFOA) (Emphasis added). Again however, this statement is merely a general allegation of what is allegedly inherently taught. Furthermore, this statement also fails to address the actual language of this claim feature.

Alanara fails to disclose all the subject matter of this claim. Furthermore, the Office's burden of providing a basis in fact or technical reasoning has not been met. Further still, the Office's burden of explaining Alanara's pertinence to the claim features has not been met. Accordingly, for at least these reasons, Applicant respectfully requests that the Office withdraw this rejection and allow this claim.

Claims 11-16 depend from claim 10 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 10, are not disclosed by Alanara. Furthermore, given the allowability of claim 10, the rejection of claim

15 under §103(a) over Alanara in view of Comer is not seen to add anything of significance.

Furthermore, on Page 33 of the NFOA, it is unclear whether Official Notice is being taken that some or all of the subject matter of claim 15 was well known. As such, if the Office is taking Official Notice, Applicant respectfully traverses the Official Notice and submits that this subject matter cannot reasonably be characterized as being capable of instant and unquestionable demonstration so as to defy dispute. (See MPEP 2144.03). This is especially true since these asserted facts can be characterized as technical facts in the esoteric area of message scripting. Furthermore, by merely citing excerpts from Comer (which does not appear to provide adequate documentary evidence for the Official Notice) without any explanation, "factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge" have not been provided to allow Applicant a fair opportunity to respond. (See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 MPEP 2144.03; and MPEP 2144.03).

In making out the rejection of claim 17, the Office argues that Alanara discloses all the subject matter of this claim.

Applicant respectfully disagrees and submits that as Applicant explained in its last response, Alanara fails to disclose all the subject matter of this claim. For example, in rejecting the claim feature "...the active message script comprises at least one command to facilitate an on-going negotiation between two or more users...", the Office cites excerpts from Columns 6, 10, 11, 12, 14, and 16 of Alanara (which do not disclose this claim feature) and states: "where the menu application and/or services can be updated in which a rerun **would be implicit** to install/add/incorporate the updated features into the menu application and/or services". (See Page 12, NFOA) (Emphasis added). As such, the Office appears

to be relying on an inherency argument with respect to several claim features. As noted above however, this statement is merely a general allegation of what is allegedly inherently taught in Alanara and is missing any basis in fact or technical reasoning. Therefore, the Office's burden of providing support for this argument has not been met. Furthermore, this statement fails to even address the actual language of this claim feature. As such, the Office's burden of explaining the pertinence of Alanara to the rejection of this claim feature has also not been met.

As another example, in rejecting the claim feature “<Instruction><Flags>[<Data>] [<Address>]...”, the Office cites excerpts from Columns 6, 9, 12, 13 and FIGS. 4b, 5, 7, 10, and 11. (See Page 12, NFOA). However, Applicant is unable to find any description, whatsoever, of this subject matter in these excerpts. Unfortunately, the Office's only explanation is to state: “where the system provides the short text messages with scripts that relate to particular applications (e.g., menu application) in which the command sequences are executed. The field size can be up to several bytes in size.” This statement, however, does not address the specific language of this claim feature. As such, Applicant is confused as to how this statement is relevant to the rejection of this claim feature. Therefore, if this rejection is to be maintained, Applicant respectfully requests that the Office identify which specific features from the cited excerpts the Office is relying on.

Alanara fails to disclose all the subject matter of this claim. Accordingly, for at least these reasons, Applicant respectfully requests that the Office withdraw this rejection and allow this claim.

Claims 18-29 depend from claim 17 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 17, are not disclosed by Alanara. Furthermore, given the allowability of claim 17, the rejections of

claims 18-21 and 23 under §103(a) over Alanara in view of Chen, and claim 27 under §103(a) over Alanara in view of Comer, are not seen to add anything of significance.

Furthermore, on Pages 33 and 35-38 of the NFOA, it is unclear whether Official Notice is being taken that some or all of the subject matter of claims 18-21, 23 and 27 was well known. As such, if the Office is taking Official Notice, Applicant respectfully traverses the Official Notice and submits that this subject matter cannot reasonably be characterized as being capable of instant and unquestionable demonstration so as to defy dispute. This is especially true since these asserted facts can be characterized as technical facts in the esoteric area of message scripting. Furthermore, by merely citing excerpts from Chen and/or Comer (which do not provide adequate documentary evidence for the Official Notice) without any explanation, factual findings predicated on sound technical and scientific have not been provided to allow Applicant a fair opportunity to respond.

Finally, with respect to claims 18-21 and 23, Applicant notes that the filing date of Chen appears to be subsequent to the filing date of this application. Furthermore, it appears that Chen claims priority to several related applications/references: 60/347,110, 10/037,570, 60/340,908, 09/853,151, and 60/248,816. Applicant therefore respectfully requests that if the rejection of these claims is to be maintained, the Office specify which excerpts from these related applications/references, if any, it is relying on to allow Applicant a fair opportunity to respond.

In making out the rejection of claim 30, the Office argues Alanara and Zhang teach all the subject matter of this claim and that it would have been obvious to modify Alanara with the teachings of Zhang “in order to provide a system and method of providing [an] information service by making use of short

messages".

Applicant respectfully disagrees and submits that a *prima facie* case of obviousness has not been established. For example, in rejecting the claim feature "...active message scripts...to facilitate an on-going negotiation between two or more users", the Office merely makes a statement of what is allegedly inherently taught in Alanara without providing any basis in fact or technical reasoning to support the Office's determination. (See Page 21, NFOA). Furthermore, this statement fails to even address the actual language of this claim feature.

As another example, the Office argues that one would have been motivated to modify Alanara with the teachings of Zhang "in order to provide a system and method of providing [an] information service by making use of short messages". However, as explained above, Alanara already teaches communicating with short messages. As such, an articulated reasoning with some rational underpinning has not been provided, as required.

Furthermore, it is unclear whether Official Notice is being taken on Page 23 with respect to "distinguishing" and "forwarding" as claimed. As such, if the Office is taking Official Notice, Applicant respectfully traverses the Official Notice and submits that this subject matter cannot reasonably be characterized as being capable of instant and unquestionable demonstration so as to defy dispute. This is especially true since these asserted facts can be characterized as technical facts in the esoteric area of message scripting and an active message gateway. Furthermore, by merely citing excerpts from Zhang (which do not provide adequate documentary evidence for the Official Notice) without any explanation, a basis in fact or technical reasoning has not been provided to allow Applicant a fair opportunity to respond.

Nevertheless, in the interest of advancing prosecution, and without conceding the propriety of this rejection, Applicant has amended this claim to

clarify, among other things, that "...at least one of the one or more active message scripts is executable on the active message gateway" and that the generating is "by the active message gateway". This subject matter is clearly missing from Alanara, Zhang, or any other reference of record, either singly or in combination.. Accordingly, for at least this reason, Applicant respectfully requests that the Office withdraw this rejection and allow this claim.

Claims 31-35 and 51 depend from claim 30 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 30, are not disclosed by Alanara, Zhang, or any other reference of record, either singly or in combination. Furthermore, given the allowability of claim 30, the rejection of claim 34 further in view of Chen is not seen to add anything of significance.

Furthermore, in rejecting claim 34 on Page 39 of the NFOA, it is unclear whether Official Notice is being taken that some or all of the subject matter of claim 34 was well known. As such, if the Office is taking Official Notice, Applicant respectfully traverses the Official Notice and submits that this subject matter cannot reasonably be characterized as being capable of instant and unquestionable demonstration so as to defy dispute. (See MPEP 2144.03). This is especially true since these asserted facts can be characterized as technical facts in the esoteric area of message scripting and an active message gateway. Furthermore, by merely citing excerpts from Comer (which do not appear to provide adequately documentary evidence for the Official Notice) without any explanation, a basis in fact or technical reasoning has not been provided to allow Applicant a fair opportunity to respond.

Finally, with respect to claim 34, Applicant notes that the filing date of Chen appears to be subsequent to the filing date of this application. Furthermore, it appears that Chen claims priority to several related

applications/references. Applicant therefore respectfully requests that if the rejection of this claim is to be maintained, the Office specify which excerpts from these related applications/references, if any, it is relying on to allow Applicant a fair opportunity to respond.

In making out the rejection of claim 36, the Office argues Alanara and Zhang teach all the subject matter of this claim and that it would have been obvious to modify Alanara with the teachings of Zhang "in order to provide a system and method of providing [an] information service by making use of short messages".

Applicant respectfully disagrees and submits that a *prima facie* case of obviousness has not been established. For example, in rejecting the claim feature "the active message script comprises...to facilitate an on-going negotiation between two or more users", the Office merely makes a statement of what is allegedly inherently taught in Alanara without providing any basis in fact or technical reasoning to support the Office's determination. (See Page 26, NFOA). Furthermore, this statement fails to even address the actual language of this claim feature.

As another example, the Office argues that one would have been motivated to modify Alanara with the teachings of Zhang "in order to provide a system and method of providing [an] information service by making use of short messages". However, as also explained above, Alanara already teaches communicating with short messages. As such, an articulated reasoning with some rational underpinning has not been provided, as required.

Furthermore, it is unclear whether Official Notice is being taken on Page 28 with respect to "software for distinguishing" and "software for forwarding" as claimed. As such, if the Office is taking Official Notice, Applicant respectfully traverses the Official Notice and submits that this subject matter cannot

reasonably be characterized as being capable of instant and unquestionable demonstration so as to defy dispute. This is especially true since these asserted facts can be characterized as technical facts in the esoteric area of short text messaging. Furthermore, by merely citing excerpts from Zhang (which do not provide adequate documentary evidence for the Official Notice) without any explanation, a basis in fact or technical reasoning has not been provided to allow Applicant a fair opportunity to respond.

Nevertheless, in the interest of advancing prosecution, and without conceding the propriety of this rejection, Applicant has amended this claim to clarify, among other things, that " the active message script comprises at least one gateway command for the active message gateway" and "software for creating, at the active message gateway, at least one of an active message or an application based at least in part on the active message script". This subject matter is clearly missing from Alanara, Zhang, or any other reference of record, either singly or in combination.. Accordingly, for at least this reason, Applicant respectfully requests that the Office withdraw this rejection and allow this claim.

Claims 37-48 and 50 depend from claim 36 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 36, are not disclosed by Alanara, Zhang, or any other reference of record, either singly or in combination. Furthermore, given the allowability of claim 36, the rejections of claims 40 and 47 further in view of Chen, and claim 48 over allegedly admitted prior art, are not seen to add anything of significance.

Furthermore, in rejecting claims 40, 47, and 48 on Pages 39-41 of the NFOA, it is unclear whether Official Notice is being taken that some or all of the subject matter of these claims was well known. As such, if the Office is taking Official Notice, Applicant respectfully traverses the Official Notice and submits that this subject matter cannot reasonably be characterized as being capable of

instant and unquestionable demonstration so as to defy dispute. This is especially true since these asserted facts can be characterized as technical facts in the esoteric area of short text messaging. Furthermore, by merely citing excerpts (which do not appear to provide adequately documentary evidence) without any explanation, a basis in fact or technical reasoning has not been provided to allow Applicant a fair opportunity to respond.

Finally, with respect to claims 40 and 47, Applicant notes that the filing date of Chen appears to be subsequent to the filing date of this application. Furthermore, it appears that Chen claims priority to several related applications/references. Applicant therefore respectfully requests that if the rejection of these claims is to be maintained, the Office specify which excerpts from these related applications/references, if any, it is relying on to allow Applicant a fair opportunity to respond.

Conclusion

All of the claims are in condition for allowance. Accordingly, if the Office's next anticipated action is to be anything other than issuance of a Notice of Allowability, Applicant respectfully requests a telephone call for the purpose of scheduling an interview.

Respectfully submitted,
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